

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Michael Kevin McFarland, #266870,

Petitioner,

vs.

Jonathan E. Ozmint,

Respondent.

C.A. No. 6:07-0588-TLW-WMC

ORDER

The Petitioner, proceeding *pro se*, brings this action seeking habeas relief pursuant to 28 U.S.C. § 2254. Petitioner is incarcerated at Lieber Correctional Institution, having previously pled guilty to burglary charges. On August 29, 2007, the Respondent filed a Motion for Summary Judgment on Petitioner's claims. Through two separate orders, Magistrate Judge William Catoe notified the Petitioner of the Motion and the potential consequences of not responding. Petitioner failed to respond by the relevant deadline, prompting Judge Catoe, on November 21, 2007, to file a Report and Recommendation ("Report") recommending dismissal of Petitioner's claim for failure to prosecute.

On December 14, 2007, after receiving an extension of time to file objections to the Report, the Petitioner filed his "objections," which appears to be the Petitioner's previously unfiled summary judgment response. Because the Petitioner has now clearly demonstrated his intent to pursue this claim by filing "opposition" to the motion for summary judgment, this Court declines to adopt the Magistrate's Report, and instead remands this action to the Magistrate Judge for reconsideration in light of the Petitioner's subsequent filing. Obviously, the Magistrate Judge did not have the benefit

of this filing at the time the Report and Recommendation was filed.

It is hereby **ORDERED** that this action is **REMANDED** to the Magistrate Judge so that his Report can be amended to address the merits of the habeas petition and “opposition” to the motion for summary judgment.

S/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

February 5, 2008
Florence, South Carolina